ECONOMIC
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TAXATION
UPDATE

Table of Contents

DIRECT TAXATION 3

RECENT CASE LAWS 4

Assessment order set aside on account of violation of principles of natural justice 4

Assessment order set aside due to inadequate response time for filing response to the notice 4

Definition of "relative" under Section 56(2)(v) of the IT Act inapplicable while determining specified domestic transactions 5

Section 263 order for SDT quashed on account of non-reference to TPO; Omission of Sec-92BA(i) of the IT Act is unconditional 6

S.B. Cotgin Pvt Ltd (ITA No. 88/NAG/2020) (NAGPUR ITAT) 6

Non-speaking order rejecting application filed under Section 197 for nil TDS certificate set aside 7

No royalty on software sale; Back-office services not to be treated as technical services QlikTech International AB (ITA No. 173/Bang/2021) (Bangalore ITAT) 7

NOTIFICATION/CIRCULARS/NEWS 9

INDIRECT TAXATION 10

RECENT CASE LAWS 11

The concept of mutuality does not apply in case of transaction between the Trust (Venture Capital Fund) & its unit holders and therefore, service tax is payable on the amounts retained by the Trust 11

Whether the importer can seek reassessment/amendment of Bill of Entry under Section 149 of the Customs Act, 1962 12

Resident Welfare Associations are required to pay GST only on the contribution which is in excess of INR 7 thousand 5 hundred per month 13

Interest under Section 50 of the Central Goods & Services Tax Act, 2017, is payable on the net tax liability 13

The SEZ unit is eligible to claim refund of the unutilized input tax credit distributed by Input Service Distributor under Section 54 of the CGST Act r.w. Rule 89 of the CGST Rules 14

Rule 86A(3) of CGST Rules- Blocking of Electronic Credit Ledger cannot be extended beyond the period of one year from the date of imposing such restriction 15

Legality of distribution of credit to a contract manufacturing unit 15

Refund of unutilized Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess 16

Reversal of CENVAT Credit not required in a sale and leaseback transaction 17

Reversal on common input services only to the extent attributable to the exempted services 17

RECENT ADVANCE RULING 19

Whether the activities carried out in India constitute a supply of “intermediary service” 19

NOTIFICATION/CIRCULARS 21

DIRECT TAXATION

RECENT CASE LAWS

Assessment order set aside on account of violation of principles of natural justice

Anju Jalaj Batra (W.P.(C) 6233/2021 C.M.Nos.19732-19733/2021) (Delhi High Court)

SUMMARY OF THE CASE

- Taxpayer was issued a notice under Section 142(1) of the Income-tax Act (**IT Act**), to which the petitioner replied and furnished relevant details/explanations. Despite the replies filed by taxpayer, Tax Officer (**TO**) [i.e., the National Faceless Assessment Centre (**NFAC**)] issued an assessment order without issuing draft assessment order or show cause notice as prescribed under Section 144B of the IT Act. Further, penalty proceedings under Section 270A and 271AAC (1) of the IT Act were also initiated.
- Thus, the taxpayer filed a writ petition before the Delhi High Court (**HC**) challenging the assessment order issued to taxpayer under Section 144 read with Section 144B of the IT Act.
- The TO contended that even though no show cause notice-cum-draft assessment order was issued, yet several opportunities had been granted to the taxpayer before passing the assessment order to explain its case.
- Delhi HC evaluated the relevant portions of Section 144B(1)(xvi)(b) as well as Section 144B (9) of the IT Act and observed that an opportunity to show cause should be provided to the taxpayer, in case any variation is proposed to the income returned by the taxpayer. Further, as per the statutory scheme provided for conducting faceless assessment proceedings, such proceedings shall be *non-est* if not carried out as prescribed under the Section 144B of the IT Act.
- Thus, Delhi HC set aside the assessment order issued to taxpayer under Section 144 read with Section 144B of the IT Act as well notices issued under Section 156 and 270A of the IT Act, however, TO is at liberty to pass a fresh assessment order in accordance with the scheme prescribed under the IT Act.

Assessment order set aside due to inadequate response time for filing response to the notice

One Mobikwik Systems Private Limited (W.P.(C) 6168/2021 & CM APPL. 19553/2021) (Delhi High Court)

SUMMARY OF THE CASE

- Taxpayer's return of income for AY 2017-18 was selected for scrutiny and notice under Section 143(2) of the IT Act was issued. During the course of assessment proceedings, several notices were served under Section 142(1) of the IT Act seeking further information against which timely responses were filed by the taxpayer.
- Further, one such notice under Section 142(1) of the IT Act was issued to the taxpayer seeking additional information and documents and the taxpayer was granted less than three days to furnish such information.
- Taxpayer was unable to respond to this notice, as the e-filing portal was not functional. However, the TO (i.e., the NFAC) proceeded to issue assessment order under Section 143(3) as well as notice of demand immediately under Section 156 of the Act along with notice for consequential penalty proceedings against the taxpayer.
- Aggrieved by the assessment order as well as demand notice, taxpayer filed a writ petition with Delhi HC contending that the insufficient timeframe given to respond to the notice as well the dysfunctional e-filing portal caused infraction of its legal rights. Furthermore, in the haste to pass the assessment order, TO had also failed to adjust the loss declared by the taxpayer against the proposed addition of income.
- Considering the inadequacy of timeframe provided to the taxpayer as well the dysfunctionality of the e-filing portal, Delhi HC set aside the assessment order as well as demand/penalty notices issued to the taxpayer. Delhi HC further clarified that the TO will be at liberty to call for further information, if necessary, before proceeding to pass the assessment order consequently.

Definition of "relative" under Section 56(2)(v) of the IT Act inapplicable while determining specified domestic transactions

Anita Sunil Mahajan (ITA.No.1859/PUN/2017) (PUNE ITAT)

SUMMARY OF THE CASE

- The taxpayer, while filing return of income for AY 2013-14, reported payments made to persons specified under Section 40A(2)(b) of the IT Act. As per the TO, total of such payments exceeded the qualifying limit of INR 5 crore resulting in Specified Domestic Transactions (**SDT**). Hence, in TO's view, taxpayer was required to maintain documents and information in terms of Sections 92D and furnish audit report as per Section 92E of the Act.
- Resultantly, TO imposed penalty under Section 271AA of the IT Act for failure to maintain information as required under Section 92D as well as for not furnishing report under Section 92E (i.e., Form No. 3CEB) of the IT Act. Subsequently, the Commissioner of Income Tax (Appeals) [**CIT(A)**] also rejected taxpayer's contention wherein the taxpayer claimed that no payments were made to persons referred in Section 40A(2)(b) of the IT Act and the payees were not covered within the definition of `relative '.
- Aggrieved by the CIT(A) order, taxpayer filed an appeal with Pune Bench of Income Tax Appellate Tribunal (**ITAT**) seeking relief from the imposition of penalty. The ITAT stated that if a particular transaction does not fall within the ambit of a specific provision, the same cannot be considered as so falling, merely because the taxpayer took a mistaken view while filing return of income.
- Further, the ITAT observed that the meaning of the term `relative' as used in Section 40A(2)(b) has not been defined under Section 40A of the IT Act. Instead, the term has been so defined under Section 2(41) of the IT Act to mean `*in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual* '.
- However, the definition of the term 'relative' in the assessment order upheld by CIT(A) has been borrowed from Section 56(2)(v) of the IT Act, which opens as follows: "*Explanation. —For the purposes of this clause, `relative 'means*". Hence, it is clear from the opening part of the Explanation of Section 56(2)(v) of the IT Act, that the definition of the term `relative' as given therein is only restricted to the said clause.
- Furthermore, Section 2, being the 'definition' provision, begins with the following words: —"*In this Act, unless the context otherwise requires…*". Thus, Section 2 applies to all the provisions under the IT Act unless the context of a particular Section or set of Sections otherwise requires.
- The ITAT thus concluded that the meaning of the term `relative' as provided in Section 2(41) of IT Act will prevail for understanding the connotation of the term `relative' under Section 40A(2)(b) as well as of the Act over the Explanation to Section 56(2)(v) of the IT Act. In case of the taxpayer, transactions with the related parties did not meet the criteria specified under Section 2(41) of the IT Act. Resultantly, penalty order issued to the taxpayer was set aside by the ITAT.

ELP Comments:

The ruling has rightly highlighted that the definition clause applies to all provisions of the IT Act unless the contextual interpretation demands otherwise. The legal principle enunciated in the ruling could be applied to impending legal issues involving interpretation of the term 'relative' itself or conflicting definitions of other terms.

Section 263 order for SDT quashed on account of non-reference to TPO; Omission of Sec-92BA(i) of the IT Act is unconditional

S.B. Cotgin Pvt Ltd (ITA No. 88/NAG/2020) (NAGPUR ITAT)

- The taxpayer purchased goods from related parties and reported the same under Section 40A(2)(b) of the IT Act. Since, the transactions exceeded the limit of INR 5 crores, the same would qualify as SDT under Section 92BA(i) of the IT Act. Nevertheless, TO proceeded to pass the assessment order dated December 18, 2017 under Section 143(3) of the IT Act accepting the return of income filed by the taxpayer (i.e., without any addition).
- However, Pr. Commissioner of Income Tax, on verification of the assessment records, held that the TO has erred in not initiating penalty proceedings under Section 271BA of the IT Act. In view of the Pr. Commissioner of Income Tax, the taxpayer was required to obtain and furnish audit report in Form No.3CEB as per Section 92BA of the IT Act read with Rule 10E of the Income-tax Rules, 1961 (**IT Rules**).
- The taxpayer argued that Section 92BA(i) of the IT Act was omitted w.e.f. April 1, 2017 which is before the issuance of assessment order dated December 18, 2017 and hence, inapplicable to the taxpayer's case.
- However, revisionary order was passed under Section 263 of the IT Act by the Principal Commissioner of Income Tax stating that the assessment was completed without conducting proper enquiry and verification, and without referring the case to the TPO. Thus, the Principal Commissioner of Income Tax held that the assessment order to be erroneous and prejudicial to the interest of the revenue and directed the TO to refer the case to TPO and examine the issues afresh.
- Consequently, the taxpayer filed an appeal with the Nagpur Bench of ITAT against the order passed by the Pr. Commissioner of Income Tax under Section 263 of the IT Act. ITAT relied upon the case of ***Texport Overseas (P) Ltd. [(2020) 114 taxmann.com 568 (Karnataka)],*** wherein the Karnataka HC held that once Clause (i) of Section 92BA of the IT Act has been omitted w.e.f. April 1, 2017, the resultant effect is that it had never been passed and it has to be considered as a provision that never existed. Further, in case of ***Rayala Corporation (P). Ltd., 1970 AIR 494 (SC)***, the Hon'ble Supreme Court (**SC**) observed that a general rule in respect of statutes is that in the absence of provision to the contrary, even ongoing proceedings will ipso-facto terminate as soon as the statute expires.
- Thus, ITAT concluded that the Pr. Commissioner of Income Tax erred in exercising jurisdiction under Section 263 of the IT Act and set aside the revisionary order.

ELP Comments:

The judgement has restated a crucial legal doctrine that a 'legal provision' or any 'statute', ceases to exist with effect from its omission. The judgement rightly highlights the principle established by the Apex Court in the case of ***Kolhapur Canesugar Works Ltd. [AIR 2000 SC 811]***, wherein it was held that, in the absence of a saving clause in favour of ongoing legal proceedings, the result of omission of any statute would be that all extant litigations should also be ended immediately. The judgement has reinstated the importance of saving clause and how future proceedings are dependent on that.

Non-speaking order rejecting application filed under Section 197 for nil TDS certificate set aside

Hero Wind Energy Private Limited [W.P.(C) 6184/2021 & C.M.Nos.19584-19586/2021] (Delhi High Court)

SUMMARY OF THE CASE

- The taxpayer was receiving interest income from its group companies, on which TDS under Section 194A of the Act was liable to be deducted. For the taxpayer, being a loss-making company, TDS deduction at the notified rate of 10% would have been much higher than the total income tax payable by the taxpayer. Thus, the taxpayer filed an application with the TO under Section 197 of the IT Act to obtain a certificate of deduction of TDS at Nil rate.
- However, the TO rejected the application solely for the reason that information regarding the rate at which taxpayer borrows funds from the market was not provided by the taxpayer.
- Aggrieved by the rejection order, taxpayer filed a writ petition before the Delhi HC. The taxpayer highlighted that the order nowhere mentions that the information supplied was erroneous or incorrect. Thus, the taxpayer contended that rejection order passed by the TO is cryptic and non-speaking.
- The Delhi HC held that the TO cannot ignore Rule 28AA of the IT Rules which lays down the factors to be taken into consideration before issuing low or nil rate TDS deduction certificate. Thus, the rejection order being non-speaking was set aside, and the matter was remanded back to the TO.

No royalty on software sale; Back-office services not to be treated as technical services

QlikTech International AB (ITA No. 173/Bang/2021) (Bangalore ITAT)

SUMMARY OF THE CASE

- Taxpayer, a company incorporated in Sweden, was engaged in the business of sale of software products and rendering information technology services. Taxpayer owned intellectual property rights (**IPR**) with respect to the software products sold. The Assessee entered into an agreement with its Indian subsidiary company (**subsidiary**) for sale of their shrink-wrapped software to end users/customers in India as per the distribution/license agreement. In view of rulings in taxpayer's own case for preceding assessment years (**AY**) i.e., AYs 2012-13 and 2013-14, ITAT held that software licensing does not amount to transfer of copyright in the software. Thus, the taxpayer does not earn any royalty income. On this basis, taxpayer did not offer the software sale receipts to tax in India.
- The taxpayer had also entered into an agreement with the subsidiary, whereby taxpayer had agreed to provide back-office support operations such as group reporting activities, statutory filings for local tax and local financial statements, services related to revenue operations, expenses, and payroll services etc.
- Taxpayer did not offer the income earned from provision of back-office support services to tax in India since the services were rendered and payments were received outside India. Thus, as per the taxpayer, such income would not form a part of scope of income in accordance with Section 5(2) of the IT Act.
- However, on assessment, TO held receipts from sale of software products taxable as 'royalty' income under Article 12(3) of the Indo-Sweden Double Taxation Avoidance Agreement (**DTAA**) as well as Section 9(1)(vi) of the IT Act. Further, TO also held back-office support services provided by the taxpayer, chargeable to income tax as 'fee for technical services' (**FTS**) under Article 12(3) of the Indo-Sweden DTAA as well as Section 9(1)(vii) of the IT Act. On further appeal, assessment order was upheld by the CIT(A). Thus, aggrieved by the CIT(A) order, taxpayer preferred an appeal before the Bangalore bench of ITAT.
- ITAT evaluated the terms of software license agreement in the taxpayer's case vis-à-vis recent SC ruling in the case of ***Engineering Analysis Centre of Excellence P. Ltd. (CA. No. 8733-8734 OF 2018).*** Since the terms of agreement were identical to the facts of the aforementioned SC ruling, ITAT held that the ruling would squarely apply. Thus,

it was concluded that owning a copyright in a work is to be distinguished from owing the physical material in which the copyrighted work may be embodied. Resultantly, income from sale of software in India would not be taxable as 'Royalty'.

- Furthermore, with respect to the taxability of back-office support services, taxpayer contended that it was entitled to avail the benefit of Most Favored Nation (**MFN**) clause as contained in the Protocol to the Indo-Sweden DTAA. In light of the same, taxpayer could claim "make available" condition prevalent in the Indo-Portuguese and Indo-USA DTAAs with respect to the taxability of FTS.
- ITAT held that taxpayer is entitled to take benefit of the MFN clause contained in the Protocol to the Indo-Sweden DTAA and thus, 'make available' condition applied to FTS in the present case. Further, placing reliance on the case of ***Raymond Ltd. (2003 86 ITD 791 Mum)***, ITAT highlighted that 'making available' refers to the stage subsequent to the 'making use of stage' i.e., in order to 'make available' any technical service, the technical knowledge/skill must remain with the recipient even after the services have been rendered.
- ITAT concluded that in the case of taxpayer, services rendered were purely in the nature of back-office services, and nothing can be regarded as having been made available to the subsidiary.
- Hence, ITAT concluded that taxpayer income cannot be taxed as royalty/FTS. Further, the income also cannot be charged as business profits since the receipts cannot be attributed to a permanent establishment in India.

NOTIFICATION/CIRCULARS/NEWS

NOTIFICATIONS

- The Central Board of Direct Taxes (**CBDT**) vide Notification No. 76/2021 dated July 2, 2021 inserted sub-rule (5) to Rule 8AA and Rule 8AB in the IT Rules. The notification provides conditions for deeming amount chargeable to tax under Section 45(4) of the IT Act as short-term/long-term capital gains as well as the method for attribution of taxable amount to the capital assets of transferor entity.
- CBDT notified Rule 8AC in the IT Rules vide Notification No. 77/2021 dated July 7, 2021. The notification prescribes mechanism for computation of short-term capital gains and written down value under Section 50 where depreciation on goodwill has been obtained.

CIRCULARS

- CBDT vide Circular no. 13/2021 dated June 30, 2021 issued guidelines providing clarification on the applicability of TDS on purchase of goods under Section 194Q of the IT Act. The guidelines elucidate the applicability of Section 194Q of the Act on transactions carried through various exchanges, calculation of threshold for applicability of TDS on purchase of goods for FY 2021-22, adjustment of GST/purchase returns while deducting TDS, non-applicability of the provisions to non-resident buyers, if such purchase is not effectively connected with the permanent establishment of the non-resident, etc.
- CBDT vide Circular no. 14/2021 dated July 2, 2021 prescribed guidelines to remove difficulties in the implementation of Section 9B and 45(4) of the IT Act effective from April 1, 2021. The guidelines clarify that the amount taxed under Section 45(4) is to be attributed to capital assets forming part of block of assets, Rule 8AB of the IT Rules applies to capital assets forming part of the block etc.

NEWS

- In view of the difficulties reported by taxpayers in electronic filing of Form 15CA/15CB on the e-filing portal, the CBDT has granted further relaxation in filing of Form 15CA/15CB in manual format till August 15, 2021. As per the press release, facility will be provided on the new e-filing portal to upload these forms at a later date for the purpose of generation of the Document Identification Number.

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INDIRECT TAXATION

RECENT CASE LAWS

The concept of mutuality does not apply in case of transaction between the Trust (Venture Capital Fund) & its unit holders and therefore, service tax is payable on the amounts retained by the Trust

In re: M/s ICICI Econet Internet and Technology Fund vs. The Commissioner of Central Tax

[2021-TIOL-359-CESTAT-BANG]

FACTS OF THE CASE

- The Appellants are Venture Capital Funds (**VCF**) established as a Trust under the Indian Trusts Act, 1882 and are also registered with the Securities and Exchange Board of India.
- The VCF pools funds from various investors who are termed as contributors through the Private Placement Memorandum (**Offer document**). The investors subscribe to units of VCF and the funds contributed by the investors are held in the Trust for the benefit of contributors.
- The investors may be of different class within the same fund where the terms of investment may differ such as period of investment, quantum of investment, timing of investment etc.
- The pooled funds are invested in the portfolio companies to generate returns. The funds are being managed by the Fund Manager/Investment Manager, who also invests in the VCF by subscribing to the units thereof.
- For managing the funds, the Fund Manager is paid a pre-agreed management fee (**AMC fees**), which is payable even if the VCF incurs loss. Apart from the AMC Fees, the Fund Manager is paid "carried interest" as a return on the investments made by it in the VCF. This amount is calculated on the pre-agreed formula given in the Offer document. The carried interest is taxed as Capital Gains under Income Tax Laws in India.
- The returns generated from the investment are distributed to the contributors after deducting various expenses incurred by the Fund such as AMC fees, carried interest, payments made to Custodian, R&T agent, brokers, selling agents, administrative expenses etc.
- The service tax authorities alleged that the expenses so reduced by the VCF and carried interest paid to the Fund Manager are for the services rendered by VCF to its investors and are accordingly liable to service tax.
- The Appellant contended that the VCF has been established as a Trust. Therefore, by virtue of the doctrine of mutuality, the fund and its contributors should not be considered as separate persons.

JUDGEMENT

- The Hon'ble CESTAT observed that the services rendered by the VCF established as a Trust to its contributors is squarely covered under the category of banking and other financial services. Further, the expenses which are retained from the profits of the investors would qualify as a consideration for such services and would be liable to service tax.
- It was commented that the Trust is only a façade; it is established with pecuniary interest and the objective is to earn profits. Further, the VCF distributes unequal profits to its investors as per its own discretion. Hence, the principle of mutuality does not apply in the instant case.
- The Hon'ble CESTAT also observed that the judicial precedents relied upon by the Appellant mostly pertain to clubs. Considering that clubs are mostly for leisure and other social activities, these precedents are not relevant in the present case and no comparison can be drawn as the Appellant is involved in a commercial activity.
- On the fact that there is no definition of Trust given in service tax law, the Hon'ble CESTAT held that in general and in common parlance, Trust is a person. It is registered under various statues and is also defined under the VCF regulations as such. Therefore, the contention that a Trust is not a person, cannot be sustained. The Hon'ble CESTAT also opined that the carried interest paid to the Fund Manager is in essence an additional performance

fees which should form part of the taxable income of the Trust. After considering the facts, the Hon'ble CESTAT has remanded the case back to the Adjudicating Authority for the purpose of re-computing the tax amount after considering eligible input tax credits, provisions for losses and cum-tax benefits.

ELP Comment:

This judgement is likely to trigger nationwide scrutiny of various structures adopted by the Funds. Further, the returns earned by the investors will be impacted and the fund managers may have to scout for alternate structures. While this order is expected to be challenged, it would be interesting to see how the concept of mutuality is interpreted.

Whether the importer can seek reassessment/amendment of Bill of Entry under Section 149 of the Customs Act, 1962

M/s Lenovo India Private Limited vs. The Commissioner of Customs [2021-TIOL-385-CESTAT-MAD]

FACTS OF THE CASE

- The Appellant had imported laptops from China.
- While filing Bill of Entry (**BOE**), inadvertently, the goods were declared as "Cartons" and classified under CTH 4819 10 10 and applicable Basic Customs Duty (**BCD**) at 10% was paid as against 'Nil' BCD payable for the correct classification of Laptops under CTH 8471 30 10.
- As the goods were shipped directly by the manufacturer, the invoice of manufacturer - instead of the actual invoice raised by the supplier on the Appellant - was enclosed with the BOE.
- Upon noticing the above mistake, the Appellant requested for re-assessment of the above BOE under Section 149 of the Customs Act, 1962 (**Customs Act**). Since, there was no reply to the request letter, the Appellant filed an appeal before the Commissioner of Customs (Appeals-I) (**Commissioner (Appeals)**), based on correct invoices.
- The Commissioner (Appeals) vide the impugned order, rejected the claim of the Appellant, holding that if there was any mistake on the part of the Appellant, then they could not seek re-assessment/amendment under Section 149 ibid by substituting different set of invoices.

JUDGEMENT

- The Hon'ble CESTAT observed that an appeal can be filed against the self-assessed BOE as the order of self-assessment is also an Assessment Order passed under the Customs Act and obviously, it would be appealable by any person aggrieved by it. Thus, the appeal was held to be maintainable.
- Any amendment/re-assessment must be in terms of Section 149 of the Customs Act and by the Proper Officer. Section 149 contemplates an opportunity to be extended to the assessee to produce such documents that were in existence at the stipulated time, that would serve to establish the error, if any, in the BOE. For this reason, the rejection of the plea for amendment under Section 149 by the Commissioner (Appeals) is not sustainable.
- In the present case, the Appellant claims that all such necessary documents are available, but however, it is for the Proper Officer to verify the availability of the same at the relevant point of time. This job is therefore, left to the Adjudicating Authority to ascertain and pass a speaking order.
- In view of the above, the Hon'ble CESTAT remanded the matter to the Adjudicating Authority/Proper Officer to verify the claim of the Appellant strictly in terms of Section 149 and thereafter, pass an appropriate speaking order after giving reasonable opportunities to the Appellant.

Resident Welfare Associations are required to pay GST only on the contribution which is in excess of INR 7 thousand 5 hundred per month

Greenwood Owners Association vs. Union of India & Others [2021-TIOL-1505-HC-MAD-GST]

FACTS OF THE CASE

- Sr. No. 77(c) of Notification No. 12/2017 - Central Tax (Rate), dated the June 28, 2017, amended vide Notification No. 2/2018 dated January 25, 2018, reads as under:

  "Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution-

  a) as a trade union;

  b) for the provision of carrying out any activity which is exempt from the levy of Goods and Service tax; or

  *c) up to an amount of **seven thousand five hundred rupees per month** per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex."*

- In view of the above, the Petitioner approached the Authority for Advance Ruling (**AAR**) to understand whether they are liable to pay GST only on the amount in excess of INR 7 thousand 5 hundred, or on the entire amount collected from the members.

- The AAR observed that in the event, the charges or share of contribution goes above INR 7 thousand 5 hundred per month, such service will not fit the description appearing in Sr. No. 77(c) of the above notification and hence, such service will not be exempt. Thus, GST is payable on the entire amount.

- Aggrieved by the order of AAR, a Writ Petition was filed before the Hon'ble Madras High Court.

JUDGEMENT

- The intention of the Notification appears clear, that is, to grant exemption to the receipts from services that answer to the description set out therein. The description of the services is also clear, that is, services to the members by way of reimbursement of charges or share of contribution up to an amount of INR 7 thousand 5 hundred per month per member for the sourcing of goods or services from a third person for the common use of its members.

- The Hon'ble High Court held that no GST is payable on the contributions up to INR 7 thousand 5 hundred, and any amount collected in excess thereof, would alone be liable to GST.

Interest under Section 50 of the Central Goods & Services Tax Act, 2017, is payable on the net tax liability

Rajkamal Builder Infrastructure Private Limited versus Union of India [2021-TIOL-745-HC-AHM-GST]

FACTS OF THE CASE

- The Petitioner received a demand order for recovery of Interest on unpaid tax. The interest liability as stated in the demand order was computed on the gross tax liability i.e. without reducing the available input tax credit. Further, the said demand order was issued in Form GST DRC-01 instead of Form GST DRC-07.

- The Petitioner approached the Hon'ble High Court to determine (a) whether interest under Section 50 of the CGST Act is to be charged on the net tax liability or on the gross tax liability; and (b) whether the demand order issued in Form GST DRC-01, is legal and proper.

JUDGEMENT

- The Hon'ble High Court observed that from the plain reading of Sec 50 of the CGST Act (*as amended by clause 112 of the Finance Act 2021*), it is amply clear that the interest can only be levied on the net tax liability and not on

the gross tax liability. In such circumstances, the demand raised by the Respondent was not in accordance with law.

- The Hon'ble High Court further observed that on a conjunctive reading of Sec 75(12), 79 of the CGST Act and Rule 142(5) of the Central Goods & Services Tax Rules, 2017 (**CGST Rules**), it can be inferred that a summary of the order for any amount of interest payable on tax and which had remained unpaid shall be uploaded electronically in FORM GST DRC-07 (not in Form DRC-01), specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. Accordingly, the demand order issued in Form GST DRC-01 was quashed and set aside. Lastly, the Hon'ble High Court also reserved the right of the Respondents to initiate fresh proceedings against the Petitioner in accordance with GST law.

The SEZ unit is eligible to claim refund of the unutilized input tax credit distributed by Input Service Distributor under Section 54 of the CGST Act r.w. Rule 89 of the CGST Rules

Britannia Industries Limited vs. Union of India [2020-TIOL-1495-HC-AHM-GST]

FACTS OF THE CASE

- The Special Economic Zone (**SEZ**) unit of the Petitioner, filed an application for refund of the Integrated Goods and Services Tax, distributed by Input Service Distributor (**ISD**) amounting to INR 99,05,156/-.
- The Adjudicating Authority rejected the refund application filed by the SEZ Unit stating there is no specific Circular or Notification issued by the board for filing of refund application by SEZ Unit. Being aggrieved by the said order, the Petitioner filed a Writ Petition before the Hon'ble High Court.

JUDGEMENT

- The Hon'ble High Court observed that, the instant case will be governed by Rule 89, which provides for the procedure for filing an application for refund of tax, interest, penalty, fees and prescribes that in respect of supplies to a SEZ unit, the application for refund has to be filed by the supplier of goods or services.
- The contention of the Respondents that as the Petitioner is not the supplier of the goods and services, the Petitioner would not be entitled to file an application for refund, is not tenable. This is due to the fact that in the present case, ISD as defined under the CGST Act is an office of the supplier of goods and services which receives tax invoices towards the receipt of input services and issues a prescribed document for the purpose of distributing the credit of GST paid on such goods or services.
- In the present case, it is not possible for a supplier of goods and services to file a refund application to claim the refund of the input tax credit distributed by ISD. This is supported by Notification No. 28/2012, dated June 20, 2012, which states that the tax attributable to services in use in more than one unit shall be distributed on a pro-rata basis of the turnover during the relevant period of the unit to the sum total turnover of all the units.
- The input tax credit is distributed by ISD to all the units including the one located in the SEZ. The Petitioner is entitled to claim refund of the IGST lying in the Electronic Credit Ledger as there is no specific supplier who can claim the refund under the provisions of the CGST Act and the CGST Rules as input tax credit is distributed by the ISD. Therefore, the claim of refund is required to be granted.

ELP Comments:

While most of the direct procurements made by the SEZ units are without GST i.e. zero-rated, the input tax credit received through ISD accumulates in the electronic credit ledger. This judgement lays down a clear guideline for seeking refund of such input tax credit by SEZ units, as the GST law does not specifically provide for claiming a refund in this case.

Rule 86A(3) of CGST Rules- Blocking of Electronic Credit Ledger cannot be extended beyond the period of one year from the date of imposing such restriction

M/s Vimal Petrothin Private Limited vs. Union of India [2021-TIOL-1412-HC-UKHAND-GST]

FACTS OF THE CASE

- The input tax credit balance available in the electronic credit ledger was provisionally blocked on the grounds that the Petitioner had availed input tax credit, amounting to INR 1.5 crores, based on fake invoices issued by non-existing firms.
- The input tax credit was blocked on January 15, 2020, under Rule 86(A)(1) of the CGST Rules. Even after one year of the blockage, there was no respite given to the Petitioner by unblocking of the electronic credit ledger. Hence, the Petitioner approached the Hon'ble High Court seeking directions on the same.

JUDGEMENT

- The Hon'ble High Court after referring to the provisions of the law and the submissions of the department, observed that the Petitioner's electronic credit ledger cannot be blocked for any period in excess of one year, in view of express provisions contained in sub-rule (3) of Rule 86(A) of the CGST Rules.
- Accordingly, the Hon'ble High Court directed the Respondent to forthwith unblock the electronic credit ledger of the Petitioner.

> **ELP Comments**:
>
> Though, this Rule intends to safeguard revenue's interest against fraudulent availment of input tax credit, it certainly creates hardship for genuine taxpayers. Further, the authorities block the entire amount lying in the electronic credit ledger instead of the disputed amount. With this judgement, the authorities will be compelled to complete the proceedings within a time bound manner or unblock the credits after one year.

Legality of distribution of credit to a contract manufacturing unit

M/s Krishna Food Products vs. The Additional Commissioner of CGST & C. Ex. [TS-207-CESTAT-2021(DEL)-EXC]

FACTS OF THE CASE

- The appellant acts as a contract manufacturing unit engaged in manufacturing biscuits for its principal "Parle Biscuit Pvt. Ltd." and has been authorized by Parle to manufacture, "biscuits" on its behalf and to comply with the procedural formalities contemplated under the Central Excise Act, 1944 (Act) and rules framed thereunder. This was in accordance with clause (1)(ii) of the Notification 36/2001 dated 26.06.2001, which deals with exemption from registration of certain category of persons under the Central Excise Rules, 2001 (Registration Exemption Notification).
- Parle procured the inputs used for manufacture of the biscuits which were supplied to the appellant. The appellant took the CENVAT Credit of the same and utilized it for payment of duty on the biscuits cleared on account of Parle.
- The office of Parle at Bahadurgarh is registered as a "Input Service Distributor" under Rule 2(m) of the CENVAT Credit Rules, 2004 (the Credit Rule). Various common inputs services were procured by Parle on payment of service tax. As the manufacturing was undertaken not only in the factories of Parle, but also in the factories of the contract manufacturer, credit on input services attributable to the final product was distributed by Parle on a pro-rata basis. This was proportionate to the turnover of each unit between its own manufacturing units and its contract manufacturing units, including the appellant, in terms of Rule 7(d) of the Credit Rules.
- However, the CENVAT credit distributed by Parle to the appellant unit for the period July 2013 to May 2015 was denied by the lower authorities.

JUDGEMENT

- The legality of distribution of CENVAT Credit by Parle to the appellant prior to 01.04.2016 i.e. prior to amendment of Rule 2(m) and 7 of the Credit Rules had to be determined in terms of the Credit Rules, Registration Exemption Notification and authorization issued by Parle whereby the appellant has agreed to discharge all the liabilities under the Act and Rules made thereunder on behalf of Parle.
- In terms of the Registration Exemption Notification the appellant stepped into the shoes of Parle.
- It is important to note that Rule 7 of the Credit Rules allows distribution of credit to 'its manufacturing units'. It does not use the words *'its own manufactures units'.* It can, therefore, safely be presumed that the term 'its manufacturing units' should include a contract manufacturer, who manufactures in accordance with the provisions of the Registration Exemption Notification
- The decision of *Sunbell Alloys (Sunbell)*[1], was heavily relied upon by the department and Commissioner (Appeals), which in turn relied upon the decision of *Panacea Biotech* which is distinguished by the decision of *Tamil Trading Corporation*. Further, it was observed that the factual matrix in the case of Sunbell was entirely different to the extent that Sunbell was a manufacturer in its own right and was not manufacturing on account of a principal therein unlike in the present case.
- The Hon'ble Tribunal held that a narrow and a literal interpretation of the phrase 'its manufacturing units' should be avoided, more particularly when the Registration Exemption Notification provides for authorization for manufacture of goods on behalf of the principal manufacturer.
- It also held that the amended provisions of Rule 2(m) and Rule 7 of the Credit Rules, after the 01.04.2016, merely seeks to rectify the lacuna in the unamended rules and, therefore, would have effect from the inception of the rules.

Refund of unutilized Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess

Schlumberger Asia Services Ltd vs. Commissioner of CE & ST, Gurgaon-I [TS-227-CESTAT-2021(CHANDI)-ST]

FACTS OF THE CASE

- The appellant is engaged in providing various services. The Cenvat Credit of various duties and services, including Education Cess, Secondary & Higher Education Cess, Krishi Kalyan Cess, paid by it were lying unutilized in their Cenvat Credit account and the appellant could not utilize the same till 30.06.2017
- On 01.07.2017, in terms of the transition provision i.e. Section 140(1) of the CGST Act, the appellant carry forwarded the said unutilized Cenvat Credit lying to its GST account
- However, on 30.08.2018, Section 140 of the CGST Act was amended thereby denying the transition of unutilized Cenvat Credit of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess to GST regime. Accordingly, the appellant immediately reversed the same and filed a refund claim
- Thereafter, a show cause notice was issued to the appellant alleging that (a) in terms of Section 140 of the CGST Act the appellant is not entitled to carry forward the Cenvat Credit of Cess (b) the refund claim filed on 30.08.2019 is barred by limitation and (c) the refund claim has lapsed as levy of Education Cess including Secondary & Higher Education Cess has been abolished from 01.06.2015 itself.
- The show cause notice was adjudicated, and the refund claim was rejected on grounds that (i) since the credit was transitioned into the GST regime, the appellant should have filed a refund claim under the CGST Act; and (ii) the

[1] 2014 (34) S.T.R. 597 (Tri.- Mumbai)

refund claim, in any case, was barred by limitation since it was required to be filed within one year from 1 July 2017

JUDGEMENT

- It was observed by the Tribunal that since Cenvat credit of the disputed duties could not be transitioned into the GST regime, the credit would not be termed as GST credit. The amount reversed would therefore be treated as Cenvat credit lying unutilized on 1 July 2017
- On the aspect of limitation, the Tribunal held that since the disallowance of credit was brought about by way of an amendment to the CGST Act and did not exist on 1.07.2017, the relevant date for commencement of limitation would be the date of amendment and not 01.07.2017

Reversal of CENVAT Credit not required in a sale and leaseback transaction

M/s. TVS Srichakra Limited vs. The Commissioner of CGST & Central Excise [TS-231-HC-2021(MAD)-EXC]

FACTS OF THE CASE

- The petitioner is engaged in the manufacture of various types of tyres and tubes. Due to certain liquidity issues, the petitioner sold its plant and machinery to one M/s. OPC Assets Solutions Private Limited which is a finance enterprise. The financier was to enter into an agreement with the petitioner, thereby, leasing the sold-out assets back to the petitioner.
- The show cause notice was to the petitioner seeking reversal of the credit already availed by the petitioner on the sold-out capital goods. The adjudicating authority confirmed the demand on the premise that as a result of these transactions, there was a deemed removal of goods from the factory premises of the petitioner and therefore, excise duty is leviable.

JUDGEMENT

- The Hon'ble Madras High Court upheld the contention of the petitioner that the Central Excise Act, 1944 did not contemplate any concept of "deemed removal" and warranted reversal of CENVAT Credit only in case of (physical) removal of capital goods as such.
- The Madras High Court relied on its previous decisions in the Commissioner of *Central Excise vs Dalmia Cements (Bharat) Ltd and Commissioner of C Ex, Tiruchirappalli vs CESTAT*[2], Chennai, wherein it was held that without physical removal of capital goods, there was no scope to invoke any deeming fiction and consequently there was no requirement to reverse any CENVAT Credit.

Reversal on common input services only to the extent attributable to the exempted services

M/s National Steel & Agro Industries Ltd. vs. Principal Commissioner, CGST & C. Ex., Ujjain [TS-220-CESTAT-2021(DEL)-EXC]

FACTS OF THE CASE

- The appellant manufactures CR coils, CR galvanized sheets, CR galvanized color coated coils, etc., falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985 and has been discharging Central Excise duty on the manufactured goods. The appellant also trades in similar products.
- The appellant did not avail CENVAT Credit on the input services used exclusively for trading. However, there were common input services such as those used inits head office which could not be attributed wholly to either manufacture or to the exempted service (trading).
- Accordingly, for the input services used exclusively for provision of exempted service were concerned, the appellant maintained separate records as required under Rule 6(2) of the Credit Rules and did not claim credit on

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[2] 2015 (323) E.L.T. 290 (Mad.)

such input services. In respect of the common input services, of the three options, the appellant opted for the third, i.e., Rule 6(3)(ii) of the Credit Rules and paid an amount determined as per Rule 6(3A).

- Disagreeing with the reversal done by the appellant, the revenue issued a series of the show cause notices demanding an amount under Rule 6(3)(i) of the Credit Rules.
- The adjudicating authority (Principal Commissioner) agreed with the contention of the appellant but re-worked the proportionate credit attributable to the exempted services. This re-calculation was done by the adjudicating authority on the following two counts:

  a) He considered the total Cenvat Credit (including the credit which was availed exclusively with respect to manufacture of dutiable goods) and not the common input service credit;

  b) He considered the total trading turnover as the value of exempted services rendered ignoring the Explanation I(c) to Rule 6(3) which clarifies that in case of trading, the value of the service shall be taken as 10% of the value of the goods traded.

JUDGEMENT

- The Explanation I(c) to Rule 6 of the Credit Rules for both the relevant periods (2015-16 and April 2016 to June 2017) clearly specifies that in case of trading service, the value of the service is the difference between the buying and selling price or 10% of the traded goods, whichever is higher. The adjudicating authority erred in not taking this Explanation into account while calculating the amount required to be reversed as per Rule 6(3A) and reckoning the total trading turnover as the value of the exempted services rendered.
- The adjudicating authority also erred in taking the total credit taken (including credit taken on inputs and input services used exclusively for manufacture of dutiable goods) to calculate the amount of Cenvat Credit that must be reversed under Rule 6(3A) of the Credit Rules. For the period April 2016 to June 2017, this is clearly, against the explicit Rule position as laid down in Rule 6(3A)(b) of the Credit Rules.
- For the period 2015- 2016, it was observed that Rule 6 of the Credit Rules has to be read as a whole while interpreting the formula for reversal of credit. In case of common input services, the only option is to divide the credit on such input services in proportion to the value of the dutiable goods and exempted services and deny credit to the extent it is attributable to the exempted services using the formula under Rule 6(3A). Therefore, the total credit taken in the formula under Rule 6(3A) of the Credit Rules can only refer to such credit as is not covered by Rule 6(2), i.e., credit on common input services. Only such an interpretation is harmonious with the restriction on credit laid down under Rule 6(1) and the provision for maintenance of separate records under Rule 6(2) of the Credit Rules

RECENT ADVANCE RULING

Whether the activities carried out in India constitute a supply of “intermediary service”

In re: M/s Airbus Group India Private Limited [2021-TIOL-155-AAR-MAD]

FACTS OF THE CASE

- The Applicant supports its Holding Company, Airbus Invest SAS, France in sourcing various goods and services from India which involves:
  - Carrying out review of Indian supplier landscape,
  - Continuous update of supplier operations,
  - Conducting supplier onsite assessments, promote awareness of Airbus Group ethics and compliance guidelines,
  - Report unethical practices of suppliers (if any),
  - Reporting on supplier compliances to local laws and regulations,
  - Providing market information,
  - Sharing information of product or services and its quality standards,
  - Information on supplier production facility, etc.
- As per the agreement entered between the Airbus Invest SAS, France and the Applicant, the activities performed by the Applicant broadly fall under two categories, Procurement Operations (PO) Function and Procurement Transformation & Central Services (PY) function.
- They also obtain initial quotations and terms of the contract from the suppliers and share the same with the Holding Company, review performance and production quality in terms of adhering to the production schedule of the suppliers selected by the Holding Company.
- The Applicant also carries out audit on the procurement process, reports on un-ethical practices of suppliers and provides support to the teams in India and Europe for special projects.
- However, the Applicant does not enter into any agreement with the vendors on any terms and conditions in respect of the supply. Further, the Applicant is not involved in selection of vendors, issue of any purchase order, taking decisions on price quotation. The Applicant also did not have any role in payment to the vendors.
- The payment to Applicant was not dependent on the sourcing of goods or services but was based on cost plus an agreed mark up.

ADVANCE RULING

- The Applicant plays an important part in identifying the vendors, making them understand the product requirement, advising and guiding them not merely on the technical aspect of the product but also the ethical aspect in relation to such activities, without which, Airbus Invest SAS, France will not be able to procure the goods from the vendors. Thus, the instant activity is nothing but facilitating the supplies to them from India.
- AAR also noted that it is not necessary that a commission payment is always involved in an intermediary scenario. Cost plus markup can also be one of the ways for payment. The criterion of the nature of the payment is not a part of the definition of the term “Intermediary”.

- The activities performed by the Applicant are fulfilling the parameters mentioned in the definition of Intermediary and thus, services provided by the Applicant do not qualify as export of service.

ELP Comments: Whether a particular activity qualifies as an 'intermediary service', has been a troubling issue since introduction of the negative list-based taxation under the erstwhile service tax regime. In absence of any specific guidelines or standard parameters for this evaluation, different factors are being employed by the taxpayers for adopting a tax position. Adopting an appropriate position is very crucial, as GST payable on such services is a cost to the recipient and at the same time, the taxpayers also must safeguard their own interest.

NOTIFICATION/CIRCULARS

S. No	Reference	Particulars
1	Circular No 157/13/2021-GST dated July 20, 2021	▪ The Circular has examined extension of period of limitation under the GST law in terms of Hon'ble Supreme Court's order dated April 27, 2021 and as prescribed in the notifications issued under Section 168A of the CGST Act (Notification no. 14/2021-Central tax dated May 1, 2021, as amended from time to time). ▪ The Circular has made following observations based on the legal opinion solicited regarding applicability of Hon'ble Supreme Court's order to the time limits prescribed under the CGST Act: i. Hon'ble Supreme Court has granted extensions only in respect of judicial and quasi-judicial proceedings in the nature of appeals/ suits/petitions etc. and has not extended it to every action or proceeding including original adjudication under the CGST Act; ii. Even in respect of actions which are in the nature of judicial or quasi-judicial proceedings, the Hon'ble Supreme Court order applies only to a suits/actions which need to be pursued within a time frame fixed by the respective statute; iii. The pending proceedings (judicial or quasi-judicial), which are required to be heard and disposed off, cannot come to a standstill by virtue of these extension and would be disposed off or adjudicated as per prevailing policies/practices; iv. The actions such as scrutiny of returns, issuance of summons, search, enquiry or investigations and even consequential arrest in accordance with CGST Act would not be covered by the Hon'ble Supreme Court's order; v. As regards issuance of SCN, granting time for replies and passing orders, Hon'ble Supreme Court's order may not apply even though the same are quasi-judicial proceedings since the said order has only been made applicable to the matters relating to petitions/applications/suits, etc. ▪ Based on the above, the Circular clarifies the extension of time limits in respect of actions/compliances under the CGST Act as follows: i. The proceedings, which need to be initiated by the authorities or compliances that need to be done by the taxpayers, would continue to be governed by the time limit or extensions provided under the CGST Act only; ii. The authorities can continue to hear and dispose off following proceedings and the same would be governed by the time limits prescribed under the CGST Act: – The proceedings, where the authorities are performing the

<table>
<tr><th>S. No</th><th>Reference</th><th>Particulars</th></tr>
<tr><td></td><td></td><td>functions of quasi-judicial authority, such as disposal of application for refund, adjudication proceedings of demand notices, etc.;
– Appeals which are filed and pending for disposal.
iii. Wherever any appeal is required to filed before Joint/Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where a proceeding for revision or rectification of any order is required to be undertaken, the time limit for the same would stand extended as per the Hon'ble Supreme Court's order.</td></tr>
<tr><td>2</td><td>Notification no. 35/2021 – Customs dated July 12, 2021</td><td>▪ Exempts following goods from whole of BCD leviable thereon till the date mentioned as under:
<table>
<tr><th>Chapter/Tariff item</th><th>Description of goods</th><th>Date up to which exemption is available</th></tr>
<tr><td>2923 20 90/ 2906 13 10</td><td>API/excipients for Amphotericin B (used for treating serious fungal infections including mucormycosis) such as DMPC (1,2-Dimyristoyl-sn-glycero-3-phosphocholine), HSPC (Hydrogenated phosphatidylcholine from soybean) etc.</td><td>August 31, 2021</td></tr>
<tr><td>Any chapter</td><td>Raw materials for manufacturing COVID test kits</td><td>September 30, 2021</td></tr>
</table>
▪ These exemptions are subject to the condition that the importer shall follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.</td></tr>
<tr><td>3</td><td>Notification no. 36/2021-Customs; Notification no. 37/2021-Customs and Circular no.</td><td>▪ The Notifications seek to effectively clarify that following goods are also leviable to Integrated tax and Compensation cess in addition to Basic Customs duty, on the value of fair cost of repair/treatment carried out including cost of material used in such repair/treatment,</td></tr>
</table>

<table>
<tr><th>S. No</th><th>Reference</th><th>Particulars</th></tr>
<tr><td></td><td>16/2021-Customs; all dated July 19, 2021</td><td>insurance and freight charges, both the ways:
i. Goods, other than goods exported under claim of drawback/refund or under exemption schemes, exported for repair abroad;
ii. Cut and polished precious/semi-precious stones, exported for treatment abroad, other than such goods exported under claim of drawback/refund or under exemption schemes.
▪ The Circular also clarifies the above and states that:
i. At the time of roll out of GST, the GST council decided to levy Customs duty on repair/treatment charges, on similar lines as was there in pre-GST regime, with only consequential amendment, i.e. replacing additional duties of Customs with IGST and Compensation cess;
ii. The deliberations in the GST council meetings suggests that the council had consciously recommended for levy of IGST and cess, albeit on the repair, insurance and freight cost instead of the entire value of goods imported;
iii. In case of Interglobe Aviation Limited versus Commissioner of Customs [2020 (43) G.S.T.L. 410 (Tri. - Del.)], the CESTAT, New Delhi has inter alia held that the intention of legislation was to impose only Basic Customs duty on the fair cost of repair charges, freight and insurance charges. Against this order, an appeal has been preferred by the Department before the Supreme Court;
iv. In this backdrop, the GST council, in its 43rd meeting held on May 28, 2021, recommended that a suitable amendment/ clarification may be issued to clarify that re-import of goods sent abroad for repair, attracts IGST and cess as well. Based on this, the present Notifications and Circular have been issued.</td></tr>
<tr><td>4</td><td>Notification no. 38/2021-Customs dated July 26, 2021</td><td>▪ Seeks to reduce rate of BCD and Agriculture Infrastructure and Development Cess on import of Lentils (Mosur), w.e.f. July 27, 2021, as under:
<table>
<tr><th rowspan="2">Description of goods</th><th colspan="2">Old rate</th><th colspan="2">New Rate</th></tr>
<tr><th>BCD</th><th>Cess</th><th>BCD</th><th>Cess</th></tr>
<tr><td>Lentils (Mosur)</td><td>10%</td><td>20%</td><td>Nil</td><td>10%</td></tr>
<tr><td>Lentils (Mosur) originating in or exported from USA</td><td>30%</td><td>20%</td><td>10%</td><td>10%</td></tr>
</table>
</td></tr>
</table>

S. No	Reference	Particulars
5	Notification no. 58/2021-Customs (N.T.) dated July 1, 2021	▪ Seeks to notify Agreements or Arrangements on 'Cooperation and Mutual Administrative Assistance (**CMAA**) in Customs matters' of India with other countries, listed in the notification, for the purpose of facilitation of trade, exchange of information for trade facilitation, etc. with the said countries.
6	Notification no. 60/2021-Customs (N.T.) dated July 15, 2021	▪ Amends tariff value for Edible Oils, Brass Scrap, Areca Nut, Gold and Silver, for levy of Customs duty.
7	Notification no. 61/2021-Customs (N.T.), Notification no. 62/2021-Customs (N.T.) and Circular no. 17/2021-Customs; all dated July 23, 2021	▪ The Circular discusses the present licensing/registration requirements for the authorized carrier and Customs brokers under the Sea Cargo Manifest and Transhipment Regulations, 2018 and the Customs Brokers Licensing Regulations, 2018, respectively. ▪ For reducing the compliance burden on the business activities, the CBIC, vide the Circular, has decided to abolish renewal requirements for license/registration under the aforesaid regulations, incorporating the following changes: i. To provide lifetime validity of the licenses/registrations (instead of validity of 3/10 years, before the amendment); ii. To enable provision for making the licenses/registrations invalid in case the licensee/registration holder is inactive for the period exceeding one year at a time; iii. To empower Principal Commissioner or Commissioner of Customs to renew a license/registration which has been invalidated due to inactivity; and iv. To provide for voluntary surrender of license/registration and the authorities to revoke such license/registration if all the payable dues are paid and no proceedings are pending against the person. ▪ The notifications have been issued for giving effect to the aforesaid decisions.
8	Circular no. 13/2021-Customs dated July 1, 2021	▪ The web-based portal for filing AEO T1 applications has been made functional since December 2018. To take this forward and in line with Digital India initiative, it has now been decided to launch new version of the said web-based portal for online filing of AEO T2 and AEO T3 applications as well. This new web version has been made available from July 7, 2021 which will ensure continuous, real time and digital monitoring of the applications filed. ▪ For smooth roll out, AEO T2 and AEO T3 applicants has been given the

S. No	Reference	Particulars
		option of filing physical applications till July 31, 2021. However, w.e.f. August 1, 2021, it will be mandatory for AEO T2 and AEO T3 applicants to register on the web-based portal for filing AEO applications.
9	Circular no. 14/2021-Customs dated July 7, 2021	▪ Seeks to implement *inter alia* following measures for expediting Customs clearances: i. The use of machine learning and the other state of art technologies has allowed to precisely target the risky consignments thereby enabling more focused attention on lesser number of Bills of Entry for the assessment. Therefore, it has been decided that w.e.f. July 15, 2021, the level of facilitation for Customs clearances should be increased to 90% as against the present average of 77%. ii. For promoting specialization in assessment, it has been decided to create separate Faceless Assessment Groups for certain commodities and this will also contribute appreciably to tax revenue. iii. For further optimizing the performance of the Faceless Assessment Groups, it has been decided to re-organize such groups. iv. Presently, the eligibility criteria for Direct Port Delivery (DPD) facility are qua the importer/entity. It has now been decided to shift the said criteria from entity based DPD to Bill of Entry level DPD. Therefore, as a general principle, all the advance Bills of Entry which are fully facilitated (do not require assessment and/or examination) would be granted the facility of DPD. v. To address the grievances of trade relating to delays in assessment, an Anonymized Escalation Mechanism (**AEM**) will be operationalized on ICEGATE which would empower importers/Customs Brokers to directly register the requirement of expeditious clearance of a delayed Bill of Entry, which may be pending for assessment or examination.
10	Circular no. 15/2021-Customs dated July 15, 2021	▪ The Risk Management System (RMS) in exports was introduced in July 2013 for processing the data and providing the output to ICES up to goods examination stage which allowed low risk consignments to be cleared based on self-assessment of the declarations by exporters. ▪ In the second phase, which has been introduced w.e.f. July 26, 2021, RMS will process the shipping bill data after the Export General Manifest (**EGM**) is filed electronically and will provide required output to ICES for selection of shipping bills for risk-based processing of duty drawback claims. Subsequent to RMS treatment, ICES will be informed whether for the processing of the drawback claim, a

S. No	Reference	Particulars
		particular shipping bill will be facilitated without intervention or will be routed to the proper officer and accordingly, further actions will be taken. ▪ The second phase of export RMS also envisages Post Clearance Audit (**PCA**) of the duty drawback shipping bills and the development of an electronic module for PCA is underway. Till such time the electronic PCA module is implemented, the current instructions for audit shall continue to remain in force.
11	Notification no. 11/2015-20 dated July 1, 2021	▪ Extends the date of modification of IEC till July 31, 2021 and waives the fees for IEC updation till such date.
12	Public Notice no. 12/2015-20 dated July 12, 2021	▪ For the purpose of reducing regulatory compliance burden on the exporters, the requirement of furnishing quarterly return/details of the export of different commodities to concerned registering authority (which issues Registration Cum Membership Certificate to exporters), has been done away with. ▪ Consequential changes have been made in the Form (ANF 2C) for making application for Registration Cum Membership Certificate.
13	Public Notice no. 13/2015-20 dated July 12, 2021	▪ For the purpose of reducing regulatory compliance burden, formats of Application for Free Sale & Commerce Certificate (ANF-2H) and Application for Free Sale & Commerce Certificate for items other than Medical Devices/Instruments (ANF-2I) are revised by deleting the requirement of furnishing Registration Cum Membership Certificate details and related declaration thereof.
14	Public Notice no. 14/2015-20 dated July 13, 2021	▪ The last date of filing application for claiming assistance under the Transport and Marketing Assistance for Specified Agriculture Products Scheme, for the quarter ending March 31, 2020 and June 30, 2020, is extended up to September 30, 2021.
15	Public Notice no. 15/2015-20 dated July 20, 2021	▪ The Kamarajar port is now enlisted as a designated port for import of un-shredded metallic scrap and metal.
16	Public Notice no. 16/2015-20 dated July 22, 2021	▪ Advance Authorizations holders will now be allowed only one revalidation for a period of 12 months for the Advance Authorizations issued on or after August 15, 2020 (instead of two revalidations of 6 months each, as provided earlier). ▪ The holder of Advance Authorization and Duty-Free Import Authorization will now be required to file prescribed records online on the DGFT website (instead of sending the same to concerned

S. No	Reference	Particulars
		Regional Authority, as provided earlier).
17	Public Notice no. 17/2015-20 dated July 27, 2021	▪ New proforma in ANF 2O(d) has been notified for filing application for revalidation of SCOMET export authorization.
18	Public Notice no. 18/2015-20 dated July 27, 2021	▪ Medicaments, containing antimalarial active principles described in sub-heading note 2 of Chapter 30 of ITC (HS), falling under Tariff Item – 3003 60 00/3004 60 00, have been notified for availment of MEIS benefit at 3% rate, for exports made during the period from January 1, 2017 to December 31, 2020.
19	Trade Notice no. 08/2021-22 dated July 8, 2021	▪ Issuance of benefits/scrips under MEIS, SEIS, ROSL and ROSCTL schemes would be on hold for a temporary period due to changes in the allocation procedure. ▪ Further, during this period, no fresh applications would be allowed to be submitted at the online module of DGFT for these schemes and all submitted applications, pending for issuance of scrips, would also be on hold.
20	Trade Notice no. 10/2021-22 dated July 19, 2021	▪ Date of mandatory electronic filing of Non-Preferential Certificate of Origin (**CoO**) through the Digital Platform is extended to October 1, 2021. ▪ Therefore, the option of paper-based filings may continue till September 30, 2021.
21	Trade Notice no. 11/2021-22 dated July 28, 2021	▪ As part of IT Revamp of exporter/importer related services, a new online module for filing of electronic applications for Export Authorizations for SCOMET Items will be made available with effect from August 5, 2021. This will be available at www.dgft.gov.in -> Services -> Export Management Systems ->SCOMET. ▪ This new module will also facilitate amendment/re-validation of SCOMET authorizations and reporting of certain details post exports (required under various public notices), on the said module.
22	Trade Notice no. 12/2021-22 dated July 28, 202	▪ As part of IT revamp, following applications related to Deemed exports are now required to be filed online on DGFT website: i. Refund of Terminal Excise Duty (**TED**) ii. Grant of Duty Drawback as per AIR and iii. Fixation of Brand Rate for Duty Drawback ▪ This will also facilitate online tracking of applications filed, issuance of deficiency letters by DGFT and reply of the same by the exporters, on the DGFT website itself.

We hope you have enjoyed reading this update. For further information please write to us at insights@elp-in.com or connect with our authors:

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